

## **Wage and Hour Division, Labor**

## **§ 501.19**

H-2ALC employer or any successor in interest by that date, the bond shall remain in force until the conclusion of such action and any related appeal or related litigation. Surety bonds may not be canceled or terminated unless 45 days' notice is provided by the surety in writing to the WHD Administrator at the address set forth in paragraph (b) of this section.

### **Subpart B—Enforcement**

#### **§ 501.15 Enforcement.**

The investigation, inspection, and law enforcement functions to carry out the provisions of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, as provided in the regulations in this part for enforcement by the WHD, pertain to the employment of any H-2A worker, any worker in corresponding employment, or any U.S. worker improperly rejected for employment or improperly laid off or displaced. Such enforcement includes the work contract provisions as defined in § 501.3(a).

#### **§ 501.16 Sanctions and remedies—general.**

Whenever the WHD Administrator believes that 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a)(1) Institute appropriate administrative proceedings, including: the recovery of unpaid wages (including recovery of recruitment fees paid in the absence of required contract clauses (see 20 CFR 655.135(k)); the enforcement of provisions of the work contract, 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part; the assessment of a civil money penalty; make whole relief for any person who has been discriminated against; reinstatement and make whole relief for any U.S. worker who has been improperly rejected for employment, laid off or displaced; or debarment for up to 3 years.

(2) The remedies referenced in paragraph (a)(1) of this section will be sought either directly from the em-

ployer, or from its successor in interest, as appropriate. In the case of an H-2ALC, the remedies will be sought from the H-2ALC directly and/or monetary relief (other than civil money penalties) from the insurer who issued the surety bond to the H-2ALC, as required by 20 CFR part 655, subpart B and § 501.9 of this part.

(b) Petition any appropriate District Court of the U.S. for temporary or permanent injunctive relief, including to prohibit the withholding of unpaid wages and/or for reinstatement, or to restrain violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, by any person.

(c) Petition any appropriate District Court of the U.S. for an order directing specific performance of covered contractual obligations.

#### **§ 501.17 Concurrent actions.**

OFLC has primary responsibility to make all determinations regarding the issuance, denial, or revocation of a labor certification as described in § 501.1(b) of this part and in 20 CFR part 655, subpart B. The WHD has primary responsibility to make all determinations regarding the enforcement functions as described in § 501.1(c) of this part. The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part. OFLC and the WHD have concurrent jurisdiction to impose a debarment remedy under 20 CFR 655.182 or under § 501.20 of the regulations in this part.

#### **§ 501.18 Representation of the Secretary.**

The Solicitor of Labor, through authorized representatives, shall represent the WHD Administrator and the Secretary in all administrative hearings under 8 U.S.C. 1188 and the regulations in this part.

#### **§ 501.19 Civil money penalty assessment.**

(a) A civil money penalty may be assessed by the WHD Administrator for each violation of the work contract, or the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the

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regulations in this part. Each failure to pay an individual worker properly or to honor the terms or conditions of a worker's employment required by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part constitutes a separate violation.

(b) In determining the amount of penalty to be assessed for each violation, the WHD Administrator shall consider the type of violation committed and other relevant factors. The factors that may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part;

(2) The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1188, 20 CFR part 655, subpart B, and the regulations in this part;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated 8 U.S.C. 1188;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for each violation of the work contract or a requirement of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part will not exceed \$1,500 per violation, with the following exceptions:

(1) A civil money penalty for each willful violation of the work contract, or of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or for each act of discrimination prohibited by § 501.4 shall not exceed \$5,000;

(2) A civil money penalty for a violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker shall not exceed \$50,000 per worker;

(3) For purposes of this section, the term serious injury includes, but is not limited to:

(i) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) Permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(4) A civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker, shall not exceed \$100,000 per worker.

(d) A civil money penalty for failure to cooperate with a WHD investigation shall not exceed \$5,000 per investigation.

(e) A civil money penalty for laying off or displacing any U.S. worker employed in work or activities that are encompassed by the approved *Application for Temporary Employment Certification* for H-2A workers in the area of intended employment either within 60 days preceding the date of need or during the validity period of the job order, including any approved extension thereof, other than for a lawful, job-related reason, shall not exceed \$15,000 per violation per worker.

(f) A civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, shall not exceed \$15,000 per violation per worker.

### § 501.20 Debarment and revocation.

(a) *Debarment of an employer.* The WHD Administrator may debar an employer or any successor in interest to that employer from receiving future labor certifications under 20 CFR part 655, subpart B, subject to the time limits set forth in paragraph (c) of this